



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0395; FRL-9563-02-R4]

#### **Air Plan Approval; Kentucky; Emissions Statement Requirements for the 2015 8-Hour Ozone Standard Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the Kentucky State Implementation Plan (SIP) submitted to EPA by the Commonwealth of Kentucky through the Kentucky Division for Air Quality (KDAQ) on October 15, 2020. The SIP revision was submitted by KDAQ to address the emissions statement requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS) for Kentucky counties in the Cincinnati, Ohio-Kentucky 2015 8-hour ozone NAAQS nonattainment area (Cincinnati, OH-KY Area), and for some of the Kentucky counties in the Louisville, Kentucky-Indiana 2015 8-hour ozone NAAQS nonattainment area (Louisville, KY-IN Area). Specifically, EPA is approving the emissions statement requirements for portions of Boone, Campbell, and Kenton Counties in the Cincinnati, OH-KY Area, and Bullitt and Oldham Counties in the Louisville, KY-IN Area. EPA will consider and take action, or has considered and taken action, on submissions addressing the emissions statement requirements for the remaining counties in these two nonattainment areas, including the Jefferson County, Kentucky portion of the Louisville, KY-IN Area, in a separate rulemaking. This action is being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No.

EPA-R04-OAR-2021-0395. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9088. Ms. Bell can also be reached via electronic mail at [bell.tiereny@epa.gov](mailto:bell.tiereny@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On October 1, 2015, EPA promulgated a revised 8-hour primary and secondary ozone NAAQS, strengthening both from 0.075 parts per million (ppm) to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).<sup>1</sup> Upon promulgation of a new or revised ozone NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. On June 4,

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<sup>1</sup> The 2015 8-hour Ozone NAAQS was promulgated on October 1, 2015, published on October 26, 2015, and effective December 28, 2015.

2018 (effective August 3, 2018), EPA designated the 7-county Cincinnati, OH-KY Area as a Marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS.<sup>2</sup> Also on June 4, 2018 (effective August 3, 2018), EPA designated the 5-county Louisville, KY-IN Area as a Marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS.<sup>3</sup> The Cincinnati, OH-KY Area and the Louisville, KY-IN Area were designated nonattainment for the 2015 8-hour Ozone NAAQS using 2014–2016 ambient air quality data. *See* 83 FR 25776.

Based on the nonattainment designation, Kentucky was required to develop a SIP revision addressing certain CAA requirements for an area designated nonattainment, including, pursuant to satisfying, among other things, CAA section 182(a)(3)(B). On October 15, 2020,<sup>4</sup> Kentucky submitted a SIP revision addressing the emissions statement requirements related to the 2015 8-hour ozone NAAQS for the Kentucky portion of the Cincinnati, OH-KY Area and for Bullitt and Oldham Counties in the Kentucky portion of the Louisville, KY-IN Area.

On February 28, 2022, EPA published a Notice of Proposed Rulemaking (NPRM) proposing to approve the October 15, 2020, SIP revision as meeting the emissions statement requirements of section 182(a)(3)(B) of the CAA and EPA’s SIP Requirements Rule.<sup>5</sup> *See* 87 FR 10998. The February 28, 2022, NPRM provides additional detail regarding the background and rationale for EPA’s action. Comments on the February 28, 2022, NPRM were due on or before March 30, 2022. EPA received no comments on the February 28, 2022, NPRM.

## **II. Final Action**

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<sup>2</sup> The Cincinnati, OH-KY Area consists of the following counties: Boone (Partial), Campbell (Partial), Kenton (Partial), in Kentucky and the entire counties of Butler, Clermont, Hamilton, and Warren in Ohio. EPA has taken action on the 2015 8-hour ozone NAAQS nonattainment area emissions statement requirements for the entire counties of Butler, Clermont, Hamilton, and Warren in Ohio in a separate action. *See* 86 FR 12270 (March 3, 2021).

<sup>3</sup> The Louisville, KY-IN Area consists of Bullitt, Jefferson, and Oldham Counties in Kentucky and Clark and Floyd Counties in Indiana. EPA took final action on the 2015 8-hour ozone NAAQS emissions statement requirements for the Jefferson County, Kentucky portion of the Louisville, KY-IN Area in a separate rulemaking, *see* 87 FR 13177 (March 9, 2022), and will take action on the emissions statement requirements for Clark and Floyd Counties in Indiana in a separate rulemaking.

<sup>4</sup> KDAQ’s transmittal letter for the October 15, 2020, SIP revision was dated October 15, 2020, and submitted to EPA on October 16, 2020.

<sup>5</sup> On December 6, 2018, EPA finalized a rule titled “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements” (SIP Requirements Rule) that establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS. *See* 83 FR 62998

EPA is approving the aforementioned October 15, 2020, Kentucky SIP revision addressing the emissions statement requirements for the 2015 8-hour Ozone NAAQS for portions of Boone, Campbell, and Kenton Counties in the Cincinnati, OH-KY Area, and Bullitt and Oldham Counties in the Louisville, KY-IN Area. EPA has determined that Kentucky's SIP revision meets the requirements of CAA sections 110 and 182.

### **III. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this

action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 19, 2022.

**Daniel Blackman,**  
*Regional Administrator,*  
*Region 4.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart S - Kentucky**

2. In §52.920(e), amend the table by adding a new entry for “Emissions Statement Requirements for the 2015 Ozone 8-hour NAAQS” at the end of the table.

The addition reads as follows:

#### **§52.920 Identification of plan.**

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(e) \* \* \*

#### **EPA - Approved Kentucky Non-regulatory Provisions**

<b>Name of non-regulatory SIP provision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date/effective date</b>	<b>EPA approval date</b>	<b>Explanations</b>
**	**	*	*	*
Emissions Statement Requirements for the 2015 8-hour Ozone NAAQS	Boone, Campbell, and Kenton Counties (partial) in Kentucky portion of Cincinnati, OH-KY Area, and Bullitt and Oldham Counties (entire) in Kentucky portion of Louisville, KY-IN Area	10/15/2020	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	